

Wage and Hour Division, Labor

§ 783.40

of the vessel while in port, are employed as seamen within the meaning of the exemptions. The same may be true of licensed relief engineers employed under the same circumstances whose duty it is to maintain the ship's auxiliary machinery in operation and repair (see *Pratt v. Alaska Packers Asso.* (N.D. Calif.) 9 WH Cases 61).

§ 783.36 Barge tenders.

Barge tenders on non-selfpropelled barges who perform the normal duties of their occupation, such as attending to the lines and anchors, putting out running and mooring lights, pumping out bilge water, and other similar activities necessary and usual to the navigation of barges, are considered to be employed as "seamen" for the purposes of the Act unless they do a substantial amount of "non-seaman's" work (*Gale v. Union Bag & Paper Corp.*, 116 F. (2d) 27 (C.A. 5, 1940), cert. den. 313 U.S. 559 (1941)). However, there are employees who, while employed on vessels such as barges and lighters, are primarily or substantially engaged in performing duties such as loading and unloading or custodial service which do not constitute service performed primarily as an aid in the operation of these vessels as a means of transportation and consequently are not employed as "seamen" (*McCarthy v. Wright & Cobb Lighterage Co.*, 163 F. (2d) 92; *Anderson v. Manhattan Lighterage Corp.*, 148 F. (2d) 971, certiorari denied 326 U.S. 722; *Woods Lumber Co. v. Tobin*, 20 Labor Cases 66, 640 (W.D. Tenn, 1951), aff'd, 199 F. (2d) 455). Whether an employee is on board a vessel primarily to perform maritime services as a seaman or loading and unloading services typical of such shore-bases personnel as longshoremen is a question of fact and can be determined only after reviewing all the facts in the particular case.

§ 783.37 Enforcement policy for non-seaman's work.

In the enforcement of the Act, an employee will be regarded as "employed as a seaman" if his work as a whole meets the test stated in § 783.31, even though during the workweek he performs some work of a nature other than that which characterizes the service of a seaman, if such nonseaman's

work is not substantial in amount. For enforcement purposes, the Administrator's position is that such differing work is "substantial" if it occupies more than 20 percent of the time worked by the employee during the workweek.

WHAT IS AN "AMERICAN VESSEL"

§ 783.38 Statutory definition of "American vessel".

The provisions of section 6(b)(2) prescribe special methods for computing minimum wages and hours worked under the Act which are applicable only to seamen who are employed on American vessels. An "American vessel", which would appear to signify a vessel of the United States as distinguished from a foreign vessel, "includes", under the terms of the definition in section 3(p) of the Act, "any vessel which is documented or numbered under the laws of the United States." The Department of the Treasury, Bureau of Customs and the United States Coast Guard, respectively, are responsible for documentation and numbering of vessels.

§ 783.39 "Vessel" includes all means of water transportation.

Since the Act does not define "vessel" it is appropriate to apply the definition of "vessel" as set forth in the United States Code (1 U.S.C. 3). The Code defines "vessel" as including "every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water". But the Federal Boating Act of 1958, (under which the U.S. Coast Guard is responsible for numbering vessels) and the Documentation Regulations administered by the Bureau of Customs, utilize this basic definition, with the addition of specific exclusions for "seaplanes" and "aircraft" (46 U.S.C. 527; 19 CFR 3.1(a)).

§ 783.40 "Documented" vessel.

A vessel "documented * * * under the laws of the United States" is typically a vessel which has been registered, enrolled and licensed, or licensed by the Bureau of Customs under the laws of the United States (46 U.S.C. 11, 193, 251-